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SEP 14 2007

OFFICE OF PETITIONS

In re	:	DECISION ON APPLICATION
Cadet, et al.	:	FOR PATENT TERM ADJUSTMENT
Application No. 10/080,917	:	AND NOTICE OF INTENT
Filed: February 22, 2002	:	TO ISSUE
Patent No. 7,094,892	:	CERTIFICATE OF CORRECTION
Issued: August 22, 2006	:	

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705(d)", filed October 16, 2006. Patentees request that the patent term adjustment under 35 U.S.C. 154(b) be corrected from four hundred seven (407) days.

The application for patent term adjustment is **GRANTED**.

The Patent Term Adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of **three hundred eighty-five (385) days**.

On March 20, 2006, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above identified application. The Notice stated that the patent term adjustment (PTA) to date was three hundred eighty-six (386) days. On June 15, 2006, Applicants timely¹ submitted an application for patent term adjustment, asserting that the Office had accorded too many days of PTA.

¹ Applicant filed the application for patent term adjustment together with the issue fee.

The application issued into Patent No. 7,094,892 on August 22, 2006. Applicants were assessed delay of sixty-nine (69) days for filing the application for patent term adjustment. Patentees timely filed the instant request for reconsideration on October 16, 2006.

The Office determined a patent term adjustment of four hundred seven (407) days based on an adjustment for PTO delay of four hundred nineteen (419) days pursuant to U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. § 1.703(a)(1), thirty-seven (37) days pursuant to U.S.C. 154(b)(1)(A)(ii) and 37 C.F.R. § 1.703(a)(3), and ninety (90) days U.S.C. 154(b)(1)(B)(iii) and 37 C.F.R. § 1.703(b), reduced by thirty-five (35) and thirty-five (35) days of applicant delay pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. § 1.704(b), and sixty-nine (69) days pursuant to 35 U.S.C. 154(b)(2)(C)(iii) and 37 C.F.R. § 1.704(c)(8). The adjustment of sixty-nine (69) days is at issue.

Patentees point out that they were improperly assessed applicant delay of sixty-nine (69) days for filing the application for patent term adjustment on June 15, 2006. In addition, Patentees argue that the Office should have assessed additional days of applicant delay for filings on December 6, 2005 and January 27, 2006.

With respect to the sixty-nine (69) days of applicant delay assessed for filing the application for patent term adjustment, pursuant to 37 C.F.R. § 1.704(e), the submission of an application for patent term adjustment will not be considered a failure to engage in reasonable efforts to conclude prosecution of the application. Accordingly, zero (0) days should have been assessed for this filing.

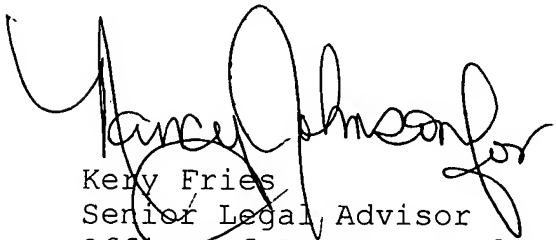
In addition, applicants should have been assessed additional days of delay. The Office mailed a final Office action on June 6, 2005. Applicants did not file a proper reply until they filed a Notice of Appeal on December 6, 2005. Accordingly, pursuant to 37 CFR 1.704(b), ninety-one (91) days of applicant delay should have been assessed. However, no applicant delay should have been assessed for filing an Amendment after the Notice of Appeal on January 27, 2006. Applicant delay is not assessed when an application is under appeal.

As this letter was submitted as an advisement to the Office of an error in Patentees' favor, the Office will not assess the \$200.00 fee under 37 CFR 1.18(e). The Office thanks patentees for their good faith and candor in bringing this to the attention of the Office.

In view thereof, the correct determination of patent term adjustment is four hundred twenty (420) days (546 (419+37+90) days of PTO delay, reduced by 161 (35+35+91) days of applicant delay).

The application file is being forwarded to the Certificate of Corrections Branch for issuance of a certificate of correction, indicating a Patent Term Adjustment **three hundred eighty-five (385) days**.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.

A handwritten signature in black ink, appearing to read "Kery Fries", is written over the typed name and title.

Kery Fries
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: draft Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,094,892 B2
DATED : August 22, 2006
INVENTOR(S) : Cadet et al.

DRAFT

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (407) days

Delete the phrase "by 407" and insert – by 385 days--